

purpose of which is to furnish services in the United States through the use of service employees." The SCA requires that contractors and subcontractors with contracts (and any bid specification) in excess of \$2,500 pay their service workers no less than the wages and fringe benefits specified by the Secretary of Labor. However, section 7 of the Act (41 U.S.C. 356) provides for several exemptions from the Act's coverage.

Section 7(3) of the SCA provides that "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect" will not be subject to the Act's coverage. The regulations at 29 CFR 4.118 further elaborate that:

a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a Government bill of lading citing the published tariff rate.

In 1994, Congress enacted two pieces of legislation—the Trucking Industry Regulatory Reform Act of 1994 (TIRRA), Pub. L. 103-311 (effective August 26, 1994), and the Federal Aviation Administration Authorization Act of 1994 (FAA Authorization Act), Pub. L. No. 103-305, (effective January 1, 1995)—which amend certain provisions of the Interstate Commerce Act (ICA). As a consequence, interstate and intrastate motor *common* carriers providing transportation of property, other than household goods,<sup>1</sup> are no longer required to file tariff rates with the ICC or any State. See 49 U.S.C. 10761 and 10762. On an administrative basis, the ICC had earlier exempted motor *contract* carriers from such filing requirements, and TIRRA codified this regulatory action. See 49 U.S.C. 10762(a)(1). This exemption from filing rates includes motor carriers providing express service in transporting property. Therefore, motor carriers, with very limited exceptions,<sup>2</sup> clearly can no

longer qualify for the statutory exemption.

These changes in the transportation law are the result of the increasingly competitive nature of the transportation of property or freight in the industry. Consequently, the basis for the SCA's section 7(3) exemption with regard to such motor carriers, is no longer compatible with the SCA's mission to protect service employees from the payment of substandard wages. The exemption was provided to "regulated industries" subject to published tariff rates because there did not exist the competitive situation faced in service contract cases generally. See Congressional Record, Vol. 111, 89th Cong., 1st Sess., 24387 (September 20, 1965) (statement of Rep. O'Hara). Under published tariff rates, contractors were required to offer services to the general public at a uniform rate. Because of the nature of the published tariff, contractors were not motivated to reduce their employees' wages in order to undercut bidders and obtain business. Conversely, however, the further deregulation of motor carriers providing transportation of property may induce some contractors to engage in substandard labor practices.

Therefore, contracts performed by a motor carrier, including those providing express service, for the interstate carriage of freight other than household goods awarded, or entered into beginning August 26, 1994, and such contracts for the intrastate carriage of freight other than household goods awarded, or entered into beginning January 1, 1995, fail to qualify for the section 7(3) exemption of the Service Contract Act. It is important to remember in applying this guidance that an option period or contract extension is normally a new contract for SCA purposes. See 29 C.F.R. 4.143-4.145.

Concerning whether another type of contract, such as a contract by a motor carrier for the carriage of personnel, personnel and freight, household goods, or a contract involving carriage by both a motor carrier and some other form of transportation, qualifies for the section 7(3) exemption will depend on the facts of each case. The Wage and Hour Division of the Department of Labor should be contacted concerning any question in that regard or with respect to the guidance provided in this memorandum.

presently still required to publish and file their tariff rates with the ICC. Also motor common carriers who are members of rate bureaus, which are now relatively few in number, may still be subject to tariff rates filed with the ICC by the bureau. See 49 U.S.C. 10706(b)(2).

## Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, D.C., on this 29th day of September, 1995.

Maria Echaveste,

*Administrator, Wage and Hour Division.*

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## Mine Safety and Health Administration

### Accident Investigation Procedures Review

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** In response to requests from the mining community for additional time in which to prepare comments, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its notice addressing the Agency's review of its accident investigation procedures and policies.

**DATES:** All comments must be submitted on or before December 11, 1995.

**ADDRESSES:** Send comments to either the Administrator, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 828, Arlington, VA 22203, Fax: 703-235-1517, or to the Administrator, Metal and Nonmetal Mine Safety and Health, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, Fax: 703-235-9173, as appropriate. Commenters are encouraged to send comments on a computer disk with their original comments in hard copy.

**FOR FURTHER INFORMATION CONTACT:** Jack Tisdale, Accident Investigation Program Manager, Division of Coal Mine Safety and Health, 703-235-1140, or David Park, Accident Investigation Program Manager, Division of Metal and Nonmetal Mine Safety and Health, 703-235-1565.

**SUPPLEMENTARY INFORMATION:** On August 10, 1995, MSHA published a notice in the Federal Register (60 FR 40859) inviting public input into its review of the Agency's accident investigation procedures and policies. The comment period was scheduled to close on October 10, 1995; however, by this notice, the Agency is extending the comment period to December 11, 1995. All interested parties are encouraged to submit comments prior to that date.

<sup>1</sup> Generally, household goods are "personal effects and property used or to be used in a dwelling," but they may also include "furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment, or supply of such stores, offices,\* \* \*" 49 U.S.C. 10102(11) (A) and (B).

<sup>2</sup> Motor common carriers that engage in the transportation of household goods or passengers are

Dated: September 28, 1995.

J. Davitt McAteer,

*Assistant Secretary for Mine Safety and Health.*

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## Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

### 1. Amax Coal Company

[Docket No. M-95-116-C]

Amax Coal Company, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Wabash Mine (I.D. No. 11-00877) located in Wabash County, Illinois. Due to deteriorating roof and rib conditions and accumulations of water in certain areas of the return air course, the area cannot be traveled safely. The petitioner proposes to establish evaluation points to monitor the affected area. The evaluation points would be established at crosscut #76 at the 3 South/4 East connection to monitor the air entering the Old 3 South/4 East and 5 East from the 3 South/4 East connection point and the Main South, and at crosscuts #186 and #196 in the Main south to monitor the air exiting the area; to have a certified person test for methane and the quantity of air at each station on a weekly basis and to record their initials, date, time, and results of the examinations in a book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

### 2. Snyder Coal Company

[Docket No. M-95-117-C]

Snyder Coal Company, R.D. #2, Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its N & L Slope (I.D. No. 36-02203) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of mine workings above and below to those present within 100 feet of the

veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

### 3. Consolidation Coal Company

[Docket No. M-95-118-C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Robinson Run No. 95 Mine (I.D. No. 46-01318) located in Harrison County, West Virginia. The petitioner proposes to use high-voltage cables (4,160-volts) with an internal ground check conductor smaller than No. 10 A.W.G as a part of its longwall mining system. The type of cables would be CABLEC/BICC Anaconda brand, 5kV, 3/C, Type SHD+GC; Americable Tiger brand, 3/C, 5kV, Type SHD-CGC; Pirelli 5kV, 3/C, Type SHD-CENTER-GC; or similar 5,000-volt cable with a center ground check conductor, but otherwise manufactured to the ICEA Standard S-75-381 for Type SHD, three-conductor cables. The petitioner states that the cable construction would be symmetrical 3/C, 3/G, and 1/GC; that the ground check conductor would be an insulated flexible center conductor with a cross-sectional area not less than 1,800 circular mils; that all personnel who perform maintenance on the longwall would receive training in the installation and repair of the cable before the alternative method is implemented; and that proposed revisions for its approved 30 CFR Part 48 training plan would be submitted to the Coal Mine Safety and Health District Manager within 60 days after a decision has been made on this petition and that these revisions would specify task training, including review of the above terms and conditions for the miners affected. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

### 4. Doverspike Bros. Coal Company, Inc.

[Docket No. M-95-119-C]

Doverspike Bros. Coal Company, Inc., R.D. #4, Box 271, Punxsutawney, Pennsylvania 15767 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its Dora No. 6 Mine (I.D. No. 36-06583) located in

Jefferson County, Pennsylvania. The petitioner proposes to maintain an alternate escapeway that would have a travelway with a minimum width of four feet and a total of 350 lineal feet instead of the required six-foot-wide escapeway. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

### 5. Energy West Mining Company

[Docket No. M-95-120-C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Trail Mountain Mine (I.D. No. 42-01211) located in Emery County, Utah. The petitioner requests a modification to its previously granted petition, docket number M-94-107-C, to use the Cablec Anaconda Brand 5KV 3/C type SHD+GC, Pirelli 5KV 3/C type SHD-Center-GC, or Tiger Brand 5KV type SHC-CGC on high-voltage longwall equipment, to include its new Trail Mountain Mine. The petitioner states that the Trail Mountain Mine is an extension of the Cottonwood Mine (I.D. No. 42-01944) with similar mining conditions and that mine personnel and mining equipment are systematically being transferred to this new mine as mining reserves are depleted. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

### 6. Energy West Mining Company

[Docket No. M-95-121-C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1100-2(a) (quantity and location of firefighting equipment) to its Trail Mountain Mine (I.D. No. 42-01211) located in Emery County, Utah. The petitioner requests a modification to its previously granted petition, docket number M-91-092-C, to use fire extinguishers instead of rock dust at temporary electrical installations, to include its new Trail Mountain Mine. The petitioner states that the Trail Mountain Mine is an extension of the Cottonwood Mine (I.D. No. 42-01944) with similar mining conditions and that mine personnel and mining equipment are systematically being transferred to this new mine as mining reserves are depleted. The petitioner asserts that the proposed alternative method would provide at